

Employment Law

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SOUTH AFRICA

Misconduct in the workplace:
Managing labour relations



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Misconduct in the workplace: Managing labour relations

Recent rulings in cases such as *Mondry Ngobeni and 51 Others v Interspray Durban CC* [2024] JS739-18 (LC) and *SARS v CCMA* [2024] JR 2223-20 (LC) offer valuable insights for employers navigating the complexities of labour relations and misconduct.

The *Mondry* case

In *Mondry*, the employer was experiencing a decline in business and proposed alternatives to retrenchment for employees, including short-time work and lay-offs. The employees were not satisfied with the proposals as well as the absence of employment agreements and proceeded to embark on an unprotected strike.

The employer notified the employees of contemplated dismissals due to their actions and proceeded to terminate their employment. The employees were provided with an opportunity to make representations on appeal as to why their dismissals should not stand.

The Labour Court (LC) found the employees guilty of participating in unprotected strike action and affirmed the substantive fairness of the dismissals. The LC highlighted that the employees had an opportunity to make representations on appeal and noted that others who made use of that opportunity were reinstated.

This case confirmed the Labour Appeal Court's position that there can be legitimate circumstances where an opportunity to be heard is provided after a decision to dismiss. Furthermore, the Basic Conditions of Employment Act 75 of 1997 requires an employer to furnish its employees with certain written particulars of employment. Accordingly, it is recommended that employers furnish employees with written employment agreements which will contribute towards sustainable employment relationships and fair and consistent treatment.

The *SARS* case

An operations manager was dismissed for gross negligence related to fictitious transactions. The employee referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration that resulted in an arbitration award in favour of the employee. The employer reviewed the award.

The LC highlighted the incoherence of the arbitration award and the Commissioner's errors in evaluating the evidence, amending the charge to a less serious charge, and incorrectly assessing the employer's consistency in applying discipline in its workplace.

This case highlights the importance of an employer exercising consistent application of disciplinary action in respect of misconduct. Furthermore, the gravity of the misconduct is vital in directing the nature of the disciplinary action and the applicable sanction in holding employees accountable and ensuring fairness in the workplace.

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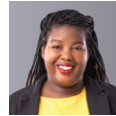
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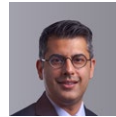
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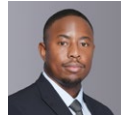
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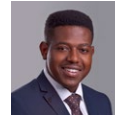
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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